CHAMBER OF PROGRESS

March 19, 2024

The Honorable Wes Moore
Office of the Governor
100 State Circle
Annapolis, MD 214017

RE: HB 603 / SB 571: Maryland Kids Code

Dear Governor Moore,

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps – I write today to **urge you to veto HB 603 / SB 571**, which would compromise online privacy, degrade online services for users of all ages, and threaten to violate First Amendment rights, likely leading to a protracted and unwinnable legal battle.

Age verification requires threaten personal privacy
Age-Appropriate Design Code requires covered platforms to reasonably determine the age of its users, whether through assumptions derived from the users' consumption of certain content, or through affirmative age verification methods. In either case, requiring users to verify age - whether through inserting a birthdate, or uploading an ID, or even via biometric methods - is privacy-invasive and requires widespread data collection. Such techniques would have to be used for every user, not just children, resulting in increased data collection for everyone on the internet.

Platforms may over-moderate for all users
The requirements as proposed in HB 603 / SB 571 would require that covered platforms act in the "best interests" of child users and create a plan to prevent the risk of children experiencing "physical or financial harm. . . psychological or emotional harm" without providing clear guidance about what that entails.

While these are important considerations, in practice, this requirement would make each site the arbiter of appropriate content for children of all age ranges and circumstances. Platforms would face difficult choices about what types of content to consider "harmful," further complicating content moderation.

Platforms have long understood the concerns raised by many stakeholders, from parents to schools to government entities, that children require greater protection online. While state and federal policymakers have explored legislation to address this issue with mixed results, many platforms are already prioritizing child safety, and are putting in place tools and procedures aimed at child safety on their platforms.

For example, YouTube Kids is a child-focused platform through which parents choose the types of videos their children can view, such as instructional videos on American Sign Language, or entertaining videos like those of peers playing Minecraft.[1] With data privacy in mind, YouTube Kids does not allow children to share personal information with third parties or make it publicly available.[2] YouTube's parent company, Google, has a Family Link tool that assists parents in supervising their children under 13, providing features such as screen monitoring and app permissions.[3] What's more, Google does not present personalized ads to children, meaning ads are not based on information from a child's account or profile.

We agree with the need to build in greater protections for young users, but some of this bill's requirements would undermine the protections it tries to create and would end up harming vulnerable users. Accordingly, we request you oppose HB 603 / SB 571.

Data Protection Impact Assessments guarantee litigation and raise major First Amendment issues

For any website that is "likely to be accessed by children," HB 603 / SB 571 requires a platform to create and deliver Data Protection Impact Assessments (DPIAs) each time the service creates a new service, product, or feature. Because all websites could be accessed by a child and all websites carry a nonzero risk of harm to children, HB 603 / SB 571's DPIA requirements effectively chill internet services from developing new products and features—even products and features that could materially benefit and improve safety for children—to avoid future litigation risks associated with their DPIAs.

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[1] *See* Youtube Kids. https://www.youtubekids.com/

[2] YouTube Kids, "Privacy Notice" YouTube, (2023). https://kids.youtube.com/t/privacynotice

[3] Google, "Family Link & Parental Supervision" Google, (2023). https://support.google.com/families/answer/7101025?hl=en&ref_topic=7327495&sjid=9062330972920503214-NA#zippy=%2Cgoogle-services-your-childs-google-account%2Chow-account-management-works

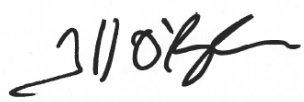
Furthermore, recent rulings from courts in Arkansas,[4] California,[5] and Ohio[6] underscore the principle that regulatory measures impacting the core editorial and curatorial functions of social media companies, even when intended to safeguard young users, are subject to rigorous constitutional scrutiny under the First Amendment.

HB 603 / SB 571 stands in direct contradiction to established legal precedent. The First Amendment stringently restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. HB 603 / SB 571, through its content-based and speaker-based restrictions, unequivocally infringes upon these fundamental freedoms. Moreover, similar legislative efforts aimed at restricting minors' access to protected speech have been met with significant judicial skepticism.[7] Courts have consistently demanded a compelling justification for such measures, alongside concrete evidence of their necessity and effectiveness in mitigating harm. The failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

As such, HB 603 / SB 571 not only contravenes core constitutional values but also is likely to be adjudicated as unconstitutional on the grounds of the First Amendment, among other legal and policy considerations.

For these reasons, we urge you to **veto HB 603 / SB 571**.

Sincerely,



Todd O'Boyle
Senior Director, Technology Policy
Chamber of Progress

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[4] *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). "If the State's purpose is to restrict access to constitutionally protected speech based on the State's belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny."
[5] *NetChoice, LLC v. Bonta*, No. 5:2022cv08861 (N.D. Cal. 2023). "[T]he Act's restrictions on the functionality of the services limit the availability and use of information by certain speakers and for certain purposes and thus regulate[s] protected speech."
[6] *NetChoice, LLC v. Yost*, 2024 WL104336 (S.D. Ohio Jan. 9, 2024). "As the [Supreme] Court explained, '[s]uch laws do not enforce parental authority over children's speech and religion; they impose governmental authority, subject only to a parental veto.' The Act appears to be exactly that sort of law. And like other content-based regulations, these sorts of laws are subject to strict scrutiny."
[7] The *Griffin* Court noted "[E]ven though the State's goal of internet safety for minors is admirable, 'the governmental interest in protecting children does not justify an unnecessarily broad suppression of speech addressed to adults.'" Similarly, the *Bonta* and Yost Courts found that the California Age Appropriate Design Code is not based on any direct evidence demonstrating a causal link between social media use and harm to younger users.